

FRONT LINE

November 2002

OFFICE OF MISSOURI ATTORNEY GENERAL

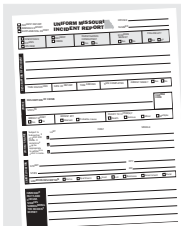
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Model incident report form developed

THE MISSOURI Press Association, Police Chiefs Association, Sheriffs' Association and Attorney General's Office have designed a model incident report that will take the guesswork out of what information should be included to comply with the Sunshine Law.

Section 610.100 requires all agencies to provide incident reports and mandates that these reports be open records barring very limited restrictions.

The Attorney General's Office has for years received inquiries from several police agencies about what to include in their reports. Likewise, the office has received inquiries and some



“This model report is **not** mandated and is **not** intended to replace any valid incident report already being used. Instead, this form is being made available with the understanding that law enforcement and the media have reached a consensus that it does comply with the Sunshine Law.”

Attorney General Jay Nixon

MODEL INCIDENT REPORT FORM ON PAGE 3

complaints from the media about report information.

While many agencies have developed incident reports, others have struggled to comply with the law. The form should help those agencies comply.

The one-page form is available on

the Attorney General's Web site at www.moago.org/incidentreport.pdf.

Officers can fill out the form using a browser such as Explorer or Netscape.

Agencies unable to download the PDF form can get a copy by calling Peggy Davis at 573-751-8844.

Federal appeals court invalidates drug checkpoints in Missouri

A FEDERAL APPEALS court has rejected an argument that drug checkpoints in Missouri are constitutional because they are different than drug checkpoints held unconstitutional by the U.S. Supreme Court in *Edmonds v. Indianapolis*, 531 U.S. 32 (2000).

As this office has warned in Front Line, the federal court did not find that individuals who exit a highway to avoid a possible drug checkpoint are subject to seizure. In *Edmonds*, the U.S. Supreme Court held that checkpoints whose primary purpose is to detect drugs are unconstitutional.

The checkpoints in *Edmonds* were conducted much like a DWI checkpoint, except for the purpose of the stop.

In Missouri, most drug checkpoints were set up differently, involving a “ruse.” A sign announcing “drug checkpoint ahead” would be set up on a rural, divided, four-lane highway. But the actual checkpoint was placed at the next exit ramp located in an isolated area with no amenities. The assumption, which was accurate, was that most people who exited were drug couriers.

Although different from the checkpoints held illegal in *Edmonds*, the AG's Office expressed concern that Missouri's drug checkpoints might nevertheless be subject to the same challenges.

In *State v. Mack*, 66 S.W.3d 706

SEE CHECKPOINTS, Page 4

Racial profiling reports due March 1, 2003

LAW ENFORCEMENT agencies are reminded that the deadline is quickly approaching to report traffic stops.

Under state statute, the AG's Office must receive agencies' Annual Report for Traffic Stops by March 1, 2003.

The Annual Report form has been revised. Four questions/responses have been changed and question No. 9 added.

Forms and instructions can be found at www.moago.org/traffic.htm.

Agencies must submit seven forms (the main Annual Report form and six traffic-stop-by-race forms.

Mail forms to:

Missouri Attorney General's Office
Attention: James Klahr
P.O. Box 899
Jefferson City, MO 65102

UPDATE: CASE LAW**U.S. SUPREME COURT****DRUG TESTING****Bd. of Educ. of Indep. Sch. Dist. No. 92 of Pottawatomie County v. Earls**

No. 01-332, U.S.S.C., June 27, 2002

A school district policy requiring students participating in extracurricular activities to consent to drug testing reasonably furthers the district's important interest in preventing and deterring drug use and does not violate the Fourth Amendment.

EASTERN DISTRICT**FAILURE TO APPEAR, INTENT****State v. Garland Williams**

No. 79411, Mo.App., July 23, 2002

The court reversed the defendant's conviction for failure to appear in court because there was insufficient evidence of his intent to purposefully fail to appear. The state does not make its case by merely showing the accused was not present. There was no direct evidence the defendant was informed of the trial date, only that his counsel was informed. The defendant did not leave the jurisdiction on the trial date or attempt to hide from authorities.

PEACEFUL TRAVELER'S EXEMPTION**State v. Gregory T. O'Toole**

No. 79997, Mo.App., June 25, 2002

The court affirmed the defendant's conviction of impersonating an officer but reversed the conviction of unlawful use of a weapon. A gun was found in the glove compartment following a traffic stop in which the defendant falsely claimed to be an officer. The state failed to prove the defendant was

not in the peaceful traveler's exemption.

The defendant testified he was returning home from his lake house. There was no evidence the purpose of the travel was unlawful — his impersonation was incidental to, not related to, the purpose.

There was sufficient evidence of his impersonation — he falsely represented himself orally and with information cards to have the trooper rely on his pretended official authority. The trooper did; he tried to determine the defendant's status during the stop and after the arrest. The trooper contacted several people to document the defendant's alleged status and did not immediately seize the weapon.

CONFLICT OF INTEREST**State, ex rel Wendy Wexler Horn, v. Ray**

No. 81020, Mo.App., July 16, 2002

The entire prosecutor's office was not disqualified from prosecuting the defendant nor any case handled by the public defender when a supervisor in the office was hired as an assistant prosecuting attorney at the time the defendant's cases were pending. The prosecutor's office screened out public defender cases from the assistant and the office disqualified itself from cases the attorney handled as an attorney of record.

WESTERN DISTRICT**RAPE SHIELD****State v. Forrest Patrick Kelley**

No. 59459, Mo.App., June 28, 2002

Evidence that a victim in a statutory sodomy case allegedly made false allegations against four other men was precluded under the rape shield statute. There was no showing that the evidence was admissible under a statutory exception and there was no evidence the allegations were false.

PROBATION REVOCATION**State v. Scott E. Henry**

No. 60072, Mo.App., June 28, 2002

The court had jurisdiction to impose a five-year sentence at a third probation violation hearing. A court order requiring the defendant to successfully complete a drug treatment program was not a sentence. When a defendant violates probation, Section 559.036.3 allows a court to enlarge the conditions of probation.

SOUTHERN DISTRICT**STEALING, VALUE****State v. Kevin R. Calicotte**

No. 24318, Mo.App., July 3, 2002

The court reversed the defendant's conviction of felony attempted stealing of grain and remanded with instructions to convict on a Class C misdemeanor. No evidence was presented of the market value at the time and place of the crime and testimony of retail value was inappropriate. As the statute instructs, the replacement value must be considered, which was under the \$750 threshold.

CONSTRUCTIVE POSSESSION**State v. Donald Kerns**

No. 24458, Mo.App., July 22, 2002

There was insufficient evidence the defendant was in constructive possession of marijuana found in the bedroom of the defendant's girlfriend although the defendant sporadically lived in the apartment and was there when it was seized. The girlfriend testified the marijuana was hers. The only statements the defendant made during the search reflected his knowledge of the marijuana and that he and his girlfriend smoked marijuana.



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- ☐ INCIDENT REPORT
☐ AMENDED REPORT
☐ SUPPLEMENTAL REPORT

UNIFORM MISSOURI INCIDENT REPORT

OFFICER _____

NUMBER _____

<input type="checkbox"/> DISPATCHED <input type="checkbox"/> CITIZEN <input type="checkbox"/> ON VIEW	<input type="checkbox"/> INCIDENT <input type="checkbox"/> CRIME	INVESTIGATION CONDUCTED? <input type="checkbox"/> Yes <input type="checkbox"/> No	EVIDENCE SEIZED? <input type="checkbox"/> Yes <input type="checkbox"/> No	FOLLOW-UP? <input type="checkbox"/> Yes <input type="checkbox"/> No
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DESCRIPTION OF INCIDENT	_____			

TIME DISPATCHED	DATE OF REPORT	TIME ARRIVED	TIME COMPLETED	ARREST MADE? <input type="checkbox"/> Yes <input type="checkbox"/> No

CRIME	DESCRIPTION OF CRIME	CHARGE CODE
	STATUTE	
	ARREST MADE? <input type="checkbox"/> Yes <input type="checkbox"/> No	ARREST BY? <input type="checkbox"/> Warrant <input type="checkbox"/> Probable cause

VICTIM'S NAME	Subject to Subsection 3 of §610.100 RSMo. It sometimes may be appropriate to withhold a victim's name.	LAST	FIRST	MIDDLE
	1	_____	_____	_____
	2	_____	_____	_____
	3	_____	_____	_____

CRIME LOCATION	STREET _____	CITY _____
	STATE _____	ZIP _____
	LOCATION DESCRIPTION	<input type="checkbox"/> Home <input type="checkbox"/> Apartment <input type="checkbox"/> Street <input type="checkbox"/> Lot <input type="checkbox"/> Business <input type="checkbox"/> Government <input type="checkbox"/> Rural

IMMEDIATE FACTS AND CIRCUM- STANCES SURROUNDING THE INCIDENT REPORT	_____

CHECKPOINTS: CONTINUED FROM PAGE 1

(Mo. banc 2002), the Missouri Supreme Court acknowledged drug checkpoints were illegal, but upheld the stop of defendant Mack because the officers had individualized reasonable suspicion.

An officer saw Mack suddenly and violently swerve onto the exit ramp after seeing the “drug checkpoint” sign. This, the Missouri Supreme Court ruled, gave officers reasonable suspicion to stop.

In a similar scenario that resulted in a federal prosecution, however, the federal courts came to a different conclusion.

In *United States v. Yousif*, decided on Oct. 7, the Eighth Circuit Court of Appeals disagreed with the *Mack* decision and held that officers do not have reasonable suspicion simply because a motorist appears to be avoiding the nonexistent drug checkpoint. The Eighth Circuit said innocent reasons can exist to avoid the checkpoint (such as avoiding the inconvenience of being stopped) and these facts do not create reasonable suspicion to make a stop.

More significant, the court announced that “reasonable suspicion cannot be manufactured by the police themselves.”

AG’s Office: Drug checkpoints no longer permissible

As a result of the *Yousif* decision, it is the opinion of the AG’s Office that checkpoints conducted primarily to interdict drugs, regardless of how they are conducted, are no longer permissible.

Although effective, the *Yousif* decision is sufficiently direct in its condemnation of these checkpoints that agencies no longer can claim they were conducting these roadblocks in “good faith.”

The risk of civil liability for agencies that continue to conduct such checkpoints rises significantly, and those claims likely would be determined by a federal court – which undoubtedly will follow the *Yousif* decision, not *Mack*.

Important note

This opinion does not prohibit the continued use of roadblocks for drunken drivers, licensing and registration, and other purposes. These are legitimate highway safety measures that are lawful and constitutional.

UPDATE: CASE LAW

SOUTHERN DISTRICT

RAPE SHIELD

State v. Kevin Scott

No. 24221, Mo.App., July 12, 2002

In a statutory rape prosecution, the trial court erroneously refused to admit the victim’s allegations of past incidents of sexual abuse under the rape shield statute. The statute does not preclude introducing such evidence if offered to impeach the credibility of the witness. The admission was harmless error given the nature of evidence presented.

DOUBLE JEOPARDY

State v. Ricky Lynn Emery

No. 24666, Mo.App., July 17, 2002

The defendant’s convictions of second-degree assault and DWI violated double jeopardy. One of the elements of assault as charged was DWI. The convictions based on the same facts constituted successive prosecutions and the DWI conviction was vacated.